A **TETUAN KHANA & CO v. SALING LAU BEE CHIANG & ORS AND OTHER APPEALS**

COURT OF APPEAL, PUTRAJAYA
IDRUS HARUN JCA
HASNAH MOHAMMED HASHIM JCA
B YEOH WEE SIAM JCA
[CIVIL APPEALS NO: J-02(W)-219-02-2017,
J-02(W)-220-02-2017, J-02(W)-221-02-2017,
J-02(W)-224-02-2017, J-02(W)-225-02-2017,
J-02(W)-226-02-2017, J-02(W)-227-02-2017
C & J-02(W)-228-02-2017]
12 SEPTEMBER 2018

TRUST: *Mismanagement – Impropriety of management of trust – Allegation of – Trust created for specific group of persons in Orang Asli community – Whether*
D *intended for private purpose – Trust to safeguard and manage Trust Fund to ensure beneficiaries be given rightful share of compensation – No element of public interest – Whether Attorney General's consent in writing required to institute proceeding – Whether Attorney General ought to be joined as party – Whether civil suits filed could only be brought by Attorney General under s. 9 of Government Proceedings*
E *Act 1956*

TRUST: *Mismanagement – Impropriety of management of trust – Allegation of – Whether trustees unlawfully conspired to utilise Trust Fund to purchase condominium units – Whether breach of statutory duties – Condominium units seized under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of*
F *Unlawful Activities Act 2001 – Whether civil suit barred from being continued in light of notice of seizure issued – Whether prior written consent of Public Prosecutor ought to be obtained – Whether civil suits proceeded in contravention of s. 54(3) of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001*

G The State Government of Johor ('State Government') acquired 53,272 hectares of land in Kota Tinggi Johor ('the land') for the purposes of construction of a dam to supply water. The acquisition of the land affected mainly three Orang Asli villages. As a consequence of the acquisition, the Orang Asli from the three villages were deprived of the use of their ancestral
H land and traditional sources of income. Fifty two of the affected Orang Asli decided to sue the State Government for compensation. Kanawagi of Messrs Khana & Co, the fourth defendant, acted for the 52 Orang Asli in their claim for compensation in Suit 828, where the High Court Judge allowed the plaintiffs' claim and declared that the State Government pay the plaintiffs the
I compensation and ordered the sum of RM26,500,000 ('the compensation

sum') to be paid to the 52 Orang Asli ('the compensation order'). Pursuant to an originating summons in the High Court, it was ordered, *inter alia*, (i) that the sum of RM22,000,000 forming part of compensation and interest awarded to the plaintiffs be paid into and held in trust in the name of the Linggui Valley Orang Asli ('Jakuns') Trust ('the Trust') established pursuant to the order in terms of the deed of trust ('the trust deed'); (ii) Tok Batin, Abdul Rahman and Kanawagi be appointed as the first trustees and who shall execute the trust deed; and (iii) the trustees shall have liberty to apply in relation to the implementation of the Trust and the performance of their duties under the said Trust ('the Trust order'). The State Government accordingly paid the compensation sum of RM22,000,000 directly to Khana & Co and paid a further sum of RM16,554,111.92 to Khana & Co in accordance with the terms of the Trust order. On 1 August 2008, the trustees withdrew RM7,000,000 out of the RM22,000,000 and purchased 27 condominium units located in Lanai Gurney, Setapak as an investment. On 5 September 2008, the first plaintiff lodged a police report against the trustees for impropriety in the management of the Trust. The 27 condominium units were seized under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLA') and Kanawagi and his son were charged for criminal breach of trust ('CBT') and under the AMLA. The Sessions Court acquitted and discharged both Kanawagi and his son and the High Court upheld the said decision. Thirty three of the 52 beneficiaries filed an action in the High Court *vide* Suit 228 to vary the orders made by the High Court Judge. The plaintiffs, as beneficiaries of the Trust in Suit 228, sued the defendants for breaches of trust. The plaintiffs claimed that Kanawagi and Tok Batin Adong, as trustees of the Trust, owed fiduciary duties to the plaintiffs as beneficiaries of the Trust whilst Khana & Co as constructive trustees of the amounts received and held by them in respect of the Trust. The plaintiffs contended that the defendants failed to provide and render any information and accounting whatsoever in respect of the Trust and the Trust Fund. In Suit 106, the plaintiff ('the Trust') claimed that the defendants had unlawfully conspired with each other to injure the plaintiff by, *inter alia* (i) utilising the Trust Fund to purchase the 27 condominium units in the name of the fourth defendant, Kanawagi; (ii) utilising the plaintiff's asset, namely the 27 condominium units, to earn secret profits and failing to render any accounts or information as to the same; and (iii) the defendants had breached their fiduciary duties to the Trust and also their contractual duties and statutory obligations. The two suits were ordered to be consolidated and after a full trial, the High Court allowed the plaintiffs' claims against the defendants. Thus, the defendants appealed. At the commencement of the hearing of the appeals, the defendants raised two preliminary issues (i) that the Suit 228 and Suit 106 filed in the High Court could only be brought by the Attorney General or with his

consent pursuant to s. 9 of the Government Proceedings Act 1956 ('GPA') and as such the decision by the High Court in both suits were a nullity and ought to be set aside; and (ii) that Suit 228 and Suit 106 were proceeded in contravention of s. 54(3) AMLA as the plaintiffs failed to get the prior written consent of the Public Prosecutor ('PP') and as such the decision of the two suits were a nullity and ought to be set aside.

Held (dismissing preliminary issues)
Per Hasnah Mohammed Hashim JCA delivering the judgment of the court:

(1) The 52 plaintiffs were heads of families representing the Orang Asli living around the Sungai Linggui catchment area. The terms of the trust deed were articulately defined – the purpose, from the moment of the conception, was a private trust. The Trust was created specifically for the benefit of the 52 plaintiffs and limited to their direct lineal descendants. No child-descendant shall be entitled to any share of the distribution of the assets or income during the lifetime of his or her parent. The clear intention of the purpose of the creation of the said Trust was to create a trust for a specific group of persons in the Orang Asli community and intended for private purpose. Where the beneficiaries were defined by reference to a personal nexus as in the case herein, the Trust, as a matter of law, could not be charitable. There was therefore absolutely no element of public interest and/or that the Trust was for public purpose. It was not created for the purpose for relief of poverty. It was a Trust created to safeguard and manage the Trust Fund pursuant to the order of the High Court to ensure that the 52 plaintiffs, as the beneficiaries, would be given their rightful share of the compensation. Therefore, there was no requirement for the plaintiffs to obtain the consent in writing of the Attorney General in order to institute this proceeding, or for the Attorney General to be joined as a party to this proceeding. (paras 40-43)

(2) The 27 condominium units did not belong to Kanawagi but belonged to the Trust, and the said 27 condominium units were the subject matter of the injunctions ordered by the High Court which still remained in force. As such, the 27 condominium units did not fall within the ambit of the notice of seizure issued to Kanawagi. Since the 27 condominium units were purportedly purchased by Kanawagi as a trustee to the Trust, to invest on behalf of the beneficiaries, they could not fall within the scope of the notice of seizure issued. The 27 condominium units were also the subject of the injunctions which had not been lifted, set aside or varied and therefore remained enforceable. The purpose of the AMLA is to provide for measures to be taken for the prevention of money laundering and terrorism financing offences – to prevent an

accused from dealing with assets or property procured through money laundering or unlawful activities. The appeals involved the enforcement of the Trust and the allegation of mismanagement of the Trust by trustees. (paras 53 & 56)

(3) Based on a reasonable and purposive interpretation of s. 54(3) of the AMLA, read together with s. 17A of the Interpretation Acts 1948 and 1967, the provision of s. 54(3) of the AMLA could not be interpreted the way that the defendants wanted it to be, that was, that the plaintiffs were barred from continuing with Suit 228 and Suit 106 in light of the notice of seizure issued. This court must interpret the relevant provisions of the AMLA to be in line with its purpose and objective as defined in the preamble to the said Act. Hence, the High Court had jurisdiction to hear both Suit 228 and Suit 106. (paras 57 & 58)

Bahasa Malaysia *Headnotes*

Kerajaan Negeri Johor ('Kerajaan Negeri') memperoleh 53,272 hektar tanah di Kota Tinggi Johor ('tanah') untuk tujuan pembinaan empangan untuk membekalkan air. Pemerolehan tanah itu telah menjejaskan tiga kampung Orang Asli. Akibat pemerolehan itu, Orang Asli dari ketiga-tiga kampung itu dinafikan penggunaan tanah nenek moyang mereka serta sumber pendapatan tradisional. Lima puluh dua Orang Asli yang terjejas membuat keputusan untuk menyaman Kerajaan Negeri untuk mendapatkan pampasan. Kanawagi dari Messrs Khana & Co, defendan keempat, bertindak untuk 52 Orang Asli dalam tuntutan pampasan mereka dalam Guaman 828, di mana Hakim Mahkamah Tinggi telah membenarkan tuntutan plaintif-plaintif dan mengisytiharkan bahawa Kerajaan Negeri membayar plaintif-plaintif pampasan dan memerintahkan jumlah RM26,500,000 ('jumlah pampasan') untuk dibayar kepada 52 Orang Asli ('perintah pampasan'). Menurut saman pemula di Mahkamah Tinggi, diperintahkan, antara lain (i) jumlah RM22,000,000 yang membentuk sebahagian pampasan dan faedah yang diawardkan kepada plaintif-plaintif dibayar dan dipegang secara amanah dalam nama Linggui Valley Orang Asli ('Jakuns') Trust ('Amanah') yang ditubuhkan menurut perintah syarat-syarat surat ikatan amanah ('surat ikatan amanah'); (ii) Tok Batin, Abdul Rahman dan Kanawagi dilantik sebagai pemegang-pemegang amanah pertama yang akan melaksanakan surat ikatan amanah; dan (iii) pemegang-pemegang amanah mempunyai kebebasan mengguna pakai penguatkuasaan amanah dan pelaksanaan kewajipan-kewajipan mereka bawah Amanah tersebut ('perintah Amanah'). Kerajaan Negeri seterusnya membayar jumlah pampasan RM22,000,000 seterusnya kepada Khana & Co dan membuat bayaran selebihnya jumlah RM16,554,111.92 kepada Khana & Co menurut syarat-syarat perintah Amanah. Pada 1 Ogos 2008, pemegang-pemegang amanah mengeluarkan RM7,000,000 daripada

A RM22,000,000 dan membeli 27 unit kondominium yang terletak di Lanai Gurney, Setapak sebagai pelaburan. Pada 5 September 2008, plaintif pertama membuat laporan polis terhadap pemegang-pemegang amanah atas kesumbangan dalam pengurusan Amanah. Dua puluh tujuh unit kondominium itu dirampas bawah Akta Pencegahan Pengubahan Wang
B Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 ('AMLA') dan Kanawagi serta anaknya dituduh bawah pecah amanah jenayah ('PAJ') dan bawah AMLA. Mahkamah Sesyen melepaskan dan membebaskan Kanawagi dan anaknya dan Mahkamah Tinggi mengesahkan keputusan tersebut. Tiga puluh tiga daripada 52 benefisiari
C memfailkan tindakan di Mahkamah Tinggi melalui Guaman 228 untuk mengubah perintah-perintah yang dibuat Hakim Mahkamah Tinggi. Plaintif-plaintif, sebagai benefisiari Amanah dalam Guaman 228, menyaman defendan-defendan untuk pelanggaran-pelanggaran amanah. Plaintif-plaintif mendakwa Kanawagi dan Tok Batin Adong, sebagai pemegang-pemegang amanah bagi Amanah itu, mempunyai kewajipan fidusiari kepada plaintif-
D plaintif sebagai benefisiari-benefisiari Amanah sementara Khana & Co sebagai pemegang-pemegang amanah konstruktif jumlah yang diterima dan dipegang oleh mereka berhubungan Amanah. Plaintif-plaintif menghujahkan defendan-defendan gagal memberi atau mengemukakan apa-apa maklumat dan perakaunan berhubung Amanah dan Dana Amanah. Dalam Guaman
E 106, plaintif ('Amanah') mendakwa defendan telah, secara menyalahi undang-undang, berkomplot antara satu sama lain untuk menyakiti plaintif dengan, antara lain (i) menggunakan Dana Amanah untuk membeli dua unit kondomonium dalam nama defendan keempat, Kanawagi (ii) menggunakan aset plaintif, iaitu 27 unit kondominium, untuk mendapat keuntungan rahsia
F dan gagal mengemukakan apa-apa perakaunan atau maklumat berkenaan yang sama; dan (iii) defendan-defendan telah melanggar kewajipan-kewajipan fidusiari terhadap Amanah dan juga kewajipan-kewajipan kontraktual dan statutori. Kedua-dua guaman diperintahkan untuk digabungkan dan selepas perbicaraan penuh, Mahkamah Tinggi membenarkan tuntutan-tuntutan
G plaintif terhadap defendan-defendan. Oleh itu, defendan-defendan merayu. Pada permulaan perbicaraan rayuan-rayuan, defendan-defendan membangkitkan dua isu awalan (i) bahawa Guaman 28 dan Guaman 106 yang difailkan di Mahkamah Tinggi hanya boleh dibawa oleh Peguam Negara atau kebenarannya menurut s. 9 Akta Prosiding Kerajaan 1956 ('APK') dan dengan itu keputusan Mahkamah Tinggi dalam kedua-dua guaman harus
H dibatalkan dan diketepikan; dan (ii) Guaman 228 dan Guaman 106 telah diteruskan dan ini melanggar s. 54(3) AMLA kerana plaintif-plaintif gagal mendapatkan kebenaran bertulis Pendakwa Raya ('PR') dan dengan itu keputusan kedua-dua guaman harus dibatalkan dan diketepikan.

I

Diputuskan (menolak isu-isu awalan)
Oleh Hasnah Mohammed Hashim HMR menyampaikan penghakiman mahkamah:

(1) Lima puluh dua plaintif-plaintif adalah ketua keluarga mewakili Orang Asli yang duduk di persekitaran kawasan tadahan Sungai Linggui. Syarat-syarat surat ikatan amanah ditaksirkan secara lantang – tujuan, dari masa konsepsi, adalah Amanah peribadi. Amanah diwujudkan secara khususnya untuk manfaat 52 plaintif-plaintif dan dihadkan kepada keturunan linear langsung. Tiada anak-keturunan berhak untuk mendapat mana-mana pengagihan aset-aset atau pendapatan semasa hayat ibu bapa mereka masing-masing. Tujuan jelas kewujudan Amanah tersebut adalah untuk mewujudkan amanah untuk kumpulan spesifik dalam komuniti Orang Asli dan dimaksudkan untuk tujuan persendirian. Di mana benefisiari-benefisiari ditakrifkan dengan rujukan pada kaitan peribadi seperti dalam kes ini, sebagai perkara undang-undang, tidak boleh menjadi amal. Oleh itu, tiada elemen kepentingan pihak awam dan/atau Amanah adalah untuk tujuan pihak awam. Ini bukan diwujudkan untuk tujuan bantuan kemiskinan. Ini adalah satu Amanah yang diwujudkan untuk melindungi dan menguruskan Dana Amanah menurut perintah Mahkamah Tinggi bagi memastikan 52 plaintif-plaintif, sebagai benefisiari-benefisiari, akan diberikan sebahagian sah pampasan mereka. Oleh itu, tiada keperluan untuk plaintif-plaintif memperolehi kebenaran bertulis Peguam Negara untuk memulakan prosiding ini, atau untuk Peguam Negara dijadikan pihak dalam prosiding ini.

(2) Dua puluh tujuh unit kondominium itu bukan milik Kanawagi tetapi milik Amanah, dan 27 unit kondominium tersebut adalah hal perkara injunksi-injunksi yang diperintahkan oleh Mahkamah Tinggi yang masih kekal berkuat kuasa. Oleh itu, 27 kondominium unit tidak terangkum dalam rangkuman notis-notis rampasan yang dikeluarkan kepada Kanawagi. Oleh kerana 27 unit kondominium itu dikatakan telah dibeli oleh Kanawagi sebagai pemegang amanah kepada Amanah, untuk melabur bagi pihak benefisiari, kondominium-kondominium tidak boleh terangkum dalam skop notis rampasan yang dikeluarkan. Dua puluh tujuh unit kondominium tersebut juga adalah subjek kepada injunksi-injunksi yang mana belum terangkat, diketepikan atau diubah dan dengan itu kekal berkuat kuasa. Tujuan AMLA adalah untuk menyediakan langkah-langkah yang akan diambil untuk mencegah pengubahan wang haram dan kesalahan-kesalahan pembiayaan keganasan – untuk menghalang tertuduh menangani aset-aset atau

A hartanah-hartanah yang diperolehi melalui pengubahan wang haram atau aktiviti-aktiviti haram. Rayuan-rayuan ini melibatkan penguatkuasaan Amanah dan tuduhan-tuduhan penyalahurusan Amanah oleh pemegang-pemegang amanah.

B **(3)** Berdasarkan tafsiran munasabah dan dalam maksud s. 54(3) AMLA, dibaca bersama dengan s. 17A Akta Tafsiran 1948 dan 1967, peruntukan s. 54(3) AMLA tidak boleh ditafsirkan mengikut kehendak defendan-defendan, iaitu bahawa plaintif-plaintif dilarang meneruskan dengan Guaman 228 dan Guaman 106 mengambil kira notis rampasan yang dikeluarkan. Mahkamah ini perlu mentafsir peruntukan-peruntukan
C relevan AMLA untuk selaras dengan tujuannya dan objektifnya seperti yang ditaksirkan dalam pengantar kepada Akta tersebut. Oleh itu, Mahkamah Tinggi mempunyai bidang kuasa mendengar kedua-dua Guaman 228 dan Guaman 106.

Case(s) referred to:

D *Income Tax Special Commissioners v. Pemsel [1891] AC 531* ***(refd)***
Oppenheim v. Tobacco Securities Trust Co Ltd: HL 13 Dec 1950 ***(refd)***

Legislation referred to:

Anti Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 4(1), 51(1)(a), (2), (3), 54(1), (3)
E Government Proceedings Act 1956, s. 9(1)
Interpretation Acts 1948 and 1967, s. 17A

(Civil Appeal No: J-02(W)-219-02-2017)
For the appellant - Gopal Sri Ram, Nagarajan Periasmay, Vinoshini Narayanasamy, David Yii; M/s T Ananthasivam
F *For the respondents - Tommy Thomas, Ragumaren Gopal, Kenneth Koh, MV Nathan & Gengeys Vijay; M/s G Ragumaren & Co*

(Civil Appeal No: J-02(W)-220-02-2017)
For the appellants - Ranjan Chandran, Manjeet Singh, Shopna Rani, Shoba Veera & Velary Velaythan; M/s Hakem Arabi & Assocs
G *For the respondents - Tommy Thomas, Ragumaren Gopal, Kenneth Koh, MV Nathan & Gengeys Vijay; M/s G Ragumaren & Co*

(Civil Appeal No: J-02(W)-221-02-2017)
For the appellant - Bastian Vendargon & Gene Anand Verdagon; M/s Shopna Rani Malakar & Co
For the respondents - Tommy Thomas, Ragumaren Gopal, Kenneth Koh, MV Nathan &
H *Gengeys Vijay; M/s G Ragumaren & Co*

(Civil Appeal No: J-02(W)-224-02-2017)
For the appellant - VS Viswanthan, G Nadesh & Velary Velayathan; M/s Malek, Paulian & Gan
For the respondent - Prakash Menon, Renu Zechariah, Cheryl Kwan, TT Ng & Gengys
I *Vijay; M/s Rosley Zechariah*

(Civil Appeal No: J-02(W)-225-02-2017)
For the appellant - Dinesh Athinarayanan & Sathayananthan Sinnappan; M/s Azri, Lee Swee Seng & Co
For the respondent - Prakash Menon, Renu Zechariah, Cheryl Kwan, TT Ng & Gengys Vijay; M/s Rosley Zechariah

(Civil Appeal No: J-02(W)-226-02-2017)
For the appellant - Gopal Sri Ram, TA Sivam & David Yii; M/s T Ananthasivam
For the respondent - Prakash Menon, Renu Zechariah, Cheryl Kwan, TT Ng & Gengys Vijay; M/s Rosley Zechariah

(Civil Appeal No: J-02(W)-227-02-2017)
For the appellants - Annou Xavier & Yong Jia Wei; M/s Azri, Lee Swee Seng & Co
For the respondent - Prakash Menon, Renu Zechariah, Cheryl Kwan, TT Ng & Gengys Vijay; M/s Rosley Zechariah

(Civil Appeal No: J-02(W)-228-02-2017)
For the appellant - Wong Rhen Yen & Ahmad Ezmeel Tarmizi; M/s Shopna Rani Malakar & Co
For the respondent - Prakash Menon, Renu Zechariah, Cheryl Kwan, TT Ng & Gengys Vijay; M/s Rosley Zechariah

Reported by Suhainah Wahiduddin

JUDGMENT

Hasnah Mohammed Hashim JCA:

[1] There are a total of eight appeals emanating from two separate judgments but based on common facts. Two suits were filed in the High Court, civil suit no. 22-228-2009 ("suit 228") and civil suit 23NCVC-106-07-2012 ("suit 106"). Both the suits were ordered to be consolidated. The appeals by the appellants (the defendants in the High Court) are against the decision of the High Court dated 22 December 2016 after a full trial, which allowed the plaintiffs' claim against the defendants. The appeals were ordered to be heard together. The appeals are:

Suit 228

(i) Civil Appeal no. J-02(W)-219-02-2017 ("219");

(ii) Civil Appeal no. J-02(W)-220-02-2017 ("220"); and

(iii) Civil Appeal no. J-02(W)-221-02-2017 ("221").

Suit 106

(iv) Civil Appeal no. J-02(NCVC)(W)-224-02-2017 ("224");

(v) Civil Appeal no. J-02(NCVC)(W)-225-02-2017 ("225");

A (vi) Civil Appeal no. J-02(NCVC)(W)-226-02-2017 ("226");

(vii) Civil Appeal no. J-02(NCVC)(W)-227-02-2017 ("227); and

(viii) Civil Appeal no. J-02(NCVC)(W)-228-02/2017 ("228").

B **[2]** Appeals 219, 220 and 221 are appeals against the decision of the learned High Court Judge in suit 228 whereas appeals 224, 225, 226, 227 and 228 are the appeals against the decision of the High Court in suit 106.

[3] At the commencement of the hearing of the appeals on 26 February 2018 learned counsels for the appellants informed the court that they wish to raise two preliminary issues. The preliminary issues are:

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(i) that the suit 228 and suit 106 filed in the High Court at Johor Bahru can only be brought by the Attorney- General or with his consent pursuant to s. 9 of the Government Proceedings Act 1956 (GPA) and as such the decision by the High Court in both suits are a nullity and ought to be set aside; and

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(ii) that suit 228 and suit 106 were proceeded in contravention of s. 54(3) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("the AMLA") as the plaintiffs failed to get the prior written consent of the Public Prosecutor ("PP") and as such the decision of the two suits are a nullity and ought to be set aside.

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[4] We heard the arguments on the preliminary issues and after hearing submissions from learned counsels for the appellants and the respondents, we unanimously dismissed both the preliminary issues. We now give our reasons for deciding so.

F

[5] For ease of reference, in this judgment, the parties will be referred to as they were in the High Court. The background facts of this appeal are important to understand the context in which these appeals and the preliminary issues were brought.

G **Background Facts**

The Land Acquisition

[6] Sometime in early 1990s the State Government of Johor acquired 53,272 hectares of land in the Linggui Valley located in the Kota Tinggi District, Johor ("the land") for the purposes of the construction of a dam to supply water pursuant to an agreement with the Government of the Republic of Singapore. The acquisition of the land affected mainly three Orang Asli villages:

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(a) Kampung Sayong Pinang;

(b) Kampung Semanggar; and

(c) Kampung Pasir Intan.

[7] As a consequence of the acquisition, the Orang Asli from the three villages were deprived of the use of their ancestral land and traditional sources of income. The plaintiffs claimed that they were restricted from entering the said acquired area to forage for their livelihood and food. Sometime in 1994, 52 of the affected Orang Asli living in the three villages decided to sue the State Government of Johor for compensation *vide* suit no. Saman Pemula No. 24-828-94 ("suit 828"). In suit 828 they sought the following declarations:

(i) a declaration that all the lands acquired by the defendants for the purpose of constructing the Sungai Linggui Dam near Kota Tinggi, Johor is aboriginal area or aboriginal reserve;

(ii) a declaration that the defendants jointly or severally pay to the plaintiffs all the compensation received by them from the Government of the Republic of Singapore or a sum deemed just by the court.

[8] One Hamzah Mohd Tahir ("Hamzah") led the negotiation on behalf of the Orang Asli with the Johor State Government. However, the negotiations failed. Hamzah then introduced the three Tok Batins ("the village headmen") to the first defendant in suit 228 ("Kanawagi").

[9] The three Tok Batins were:

(i) Adong bin Kuwau, the Tok Batin of Kampung Sayong Pinang, the second defendant in suit 228 suit ("Tok Batin Adong");

(ii) Daud bin Kadir, the Tok Batin for Kampung Semanggar, the third defendant in suit 228 ("Tok Batin Daud"); and

(iii) Abdul Rahman bin Abdullah of Kampung Pasir Intan who was however, not a Tok Batin ("Abdul Rahman").

[10] The 52 Orang Asli appointed Kanawagi of Messrs Khana & Co., the fourth defendant, in the same suit to represent them in suit 828. Kanawagi, through his law firm, Khana & Co., acted for the 52 Orang Asli in their claim for compensation in suit 828. On 19 December 1995 the learned High Court Judge allowed the plaintiffs' claim and declared that the State Government of Johor pay the plaintiffs the compensation received by them from the Government of the Republic of Singapore or a sum deemed just by the court. The High Court ordered the sum of RM26,500,000 as compensation ("the compensation sum") to be paid to the 52 Orang Asli ("the compensation order").

[11] Dissatisfied with the High Court's decision, the Johor State Government appealed to the Court of Appeal. The appeal was, however, dismissed with costs by the Court of Appeal on 19 November 1997. The matter was subsequently remitted to the Johor Bahru High Court to decide on the mechanics of the distribution of the payment of the compensation sum to the 52 Orang Asli. Khana & Co on behalf of the 52 Orang Asli filed an originating summons for an order for the management and distribution of the said compensation sum awarded ("the OS").

[12] Pursuant to the OS, the Johor Bahru High Court on 5 June 2000 ordered as follows:

(i) the sum of RM22,000,000 forming part of compensation and interest awarded to the plaintiffs pursuant to the judgment dated 29 December 1995, as varied by the order of the Court of Appeal in Civil Appeal No. J-01-65-1997 on 19 November 1997 be paid into and held in trust in the name of the Linggui Valley Orang Asli (Jakuns) Trust ('the Trust') established pursuant to the order dated 5 June 2000 in terms of the deed of trust ("the trust deed") as amended and approved by court;

(ii) the duration of the Trust shall be 25 years;

(iii) Tok Batin Adong (Tok Batin for the community in Kampung Pasir Assam (Pasir Intan), Abdul Rahman (for the community in Sayong Pinang) and Kanawagi be appointed as the first trustees, and who shall execute the trust deed;

(iv) the Director General of Jabatan Hal Ehwal Orang Asli, Malaysia, ("DGJHEOA") for the time being shall be appointed the additional trustee of the Trust;

(v) the defendants shall pay the sum of RM22,000,000 direct to the account of the Trust upon notification of its establishment;

(vi) the balance of the compensation sum inclusive of the accrued interest (other than the said sum of RM22,000,000 and accrued interest thereon shall be paid to Khana & Co to be distributed to the 52 Orang Asli after the deduction and payment of all legal fees, costs, consultation fees and expenses incurred for the purpose of, and in connection with, the prosecution of the OS and all subsequent and related proceedings; and

(vii) the trustees shall have liberty to apply in relation to the implementation of the Trust and the performance of their duties under the said Trust.

("the Trust order").

[13] By the Trust order, the trust deed dated 5 June 2000 was created governing the terms relating to the judgment sum, the subject matter of the trust under the management and control of the trustees so named. The High Court retained control and supervision of the Trust. On 5 July 2000, the Johor State Government paid RM22,000,000 directly to the trustees. On 13 July 2000 the Johor State Government paid the balance sum of RM16,554,111.92 directly to Khana & Co.

The Deed Of Trust ("The Trust Deed")

[14] The salient terms of the Trust as embodied in the trust deed are:

(i) the compensation sum including principal and interest as at 31 May 2000, amounts to slightly over RM38,000,000 (Re: para. 3 of the recital of the trust deed);

(ii) the compensation sum of RM22,000,000 is kept in Trust for the 52 Orang Asli and their descendants but no child descendant shall be entitled to any share or distribution of the assets or income during the lifetime of his or her parent (re: cl. 2 of the trust deed);

(iii) the number of trustees shall not exceed four and shall comprise:

(a) the two Tok Batins residing in Kampung Pasir Assam (Pasir Intan), Sayong Pinang and Semanggar;

(b) the DGJHEOA, for the time being provided he is willing to accept the appointment as trustee;

(c) one other independent trustee appointed by the court.;

(re: cl. 3.1 of the trust deed);

(iv) the first trustee shall be:

(a) Adong bin Kuwau, Tok Batin of Kampung Pasir Assam (Pasir Intan);

(b) Abdul Rahman representing the community in Sayong Pinang; and

(c) Kanawagi.

(re: cl. 3.2 of the trust deed);

(v) the trustees shall, unless varied by an order of the court pay the sum of RM900 per month to all the beneficiaries of the Trust. (re: cl. 4.2 of the trust deed);

(vi) the trustee shall stand possessed of the income of the trust fund in every financial year upon trust to apply or set aside the same or any parts thereof to or for the benefit of the beneficiaries (re: cl. 4.1 of the trust deed);

(vii) the trustees to maintain proper accounts (re: cl. 8 of the trust deed).

The Disbursement Of The Compensation Sum

[15] On or about 5 July 2000 the Johor State Government paid the compensation sum of RM22,000,000 directly to the legal firm, Khana & Co. On 13 July 2000 the State Government of Johor paid a further sum of RM16,554,111.92 to Khana & Co in accordance with the terms of the Trust order. Pursuant to the High Court Order dated 5 June 2000 the following payments, *inter alia* were made:

(i) RM2,200,000 was paid to Hamzah bin Tahir;

(ii) RM1,900,000 and RM3,000,000 were paid to Messrs R Rajasingam & Co;

(iii) RM500,000 was paid to Messrs RR Sethu; and

(iv) the sums of RM500,000 and RM4,054,222.93 were paid to Messrs Khana & Co as legal fees.

[16] The trustees then placed the compensation sum of RM22,000,000 in a fixed deposit and through the two Tok Batins paid the RM900 per month including any monthly interest balance to the beneficiaries as stipulated under cl. 5 of the trust deed from October 2000 until March 2009.

[17] By a court order dated 4 April 2006 (JB Suit 24-197-2006) Kanawagi and Messrs Khana & Co were ordered to provide a financial statement of the Trust certified by a qualified public accountant. However, through their solicitors, Messrs Sharifah & Associates, the defendants instead submitted unaudited/uncertified financial statements for the years 2000 to 2006 which in essence was in violation of the said court order. Thus, the plaintiffs contended that by doing so the defendants are in breach of cl. 8.1 of the trust deed which stipulates:

> In each financial year the trustees shall have prepared by a certified public accountant authorised to practise in Malaysia financial statements, including a profit and loss account and balance sheet as at and of each financial year certified by such accountant to be true and proper statement of the affairs of the trust setting out all:
>
> (a) income of the trust fund;
>
> (b) capital of the trust fund;

(c) costs and disbursements and other outgoings paid or payable out of the trust fund and chargeable against income;

(d) capital expenditure and liabilities chargeable to capital;

(e) investments and money comprised in the trust fund;

(f) amounts distributed by the Trustees to each beneficiary;

(g) to the extent to which the Trustees may require, the separate recording of any category of income capital.

The 27 Condominium Units

[18] On 1 August 2008, the trustees withdrew RM7,000,000 out of the RM22,000,000 and purchased 27 condominium units located in Lanai, Gurney, Setapak Kuala Lumpur as an investment. On 5 September 2008 the first plaintiff, Saling Lau, lodged a police report against the trustees for impropriety in the management of the Trust. The 27 condominium units were subsequently seized under the AMLA. Kanawagi and his son, Dinesh were charged for criminal breach of trust ("CBT") and under the AMLA. The Sessions Court at the end of the prosecution's case acquitted and discharged both Kanawagi and Dinesh without calling for their defence. On appeal, the High Court upheld and affirmed the decision of the Sessions Court.

The Appointment Of Receiver And Manager (R&M)

[19] On 25 March 2009, 33 of the 52 beneficiaries filed an action in the Johor Bahru Court *vide* suit 228 to vary the orders made by the High Court Judge in 2000. The High Court Judge on 25 March 2009 ordered the suspension of the trustees and appointed an interim receiver and manager ("R&M") to manage the Trust.

[20] After the appointment of the R&M, the R&M filed a suit in the Kuala Lumpur High Court relating to the same subject matter (MTKL 22NCC-1512-09-2011) ("suit 1512"). The first to seventh defendants subsequently filed an application to transfer suit 1512 to Johor Bahru and for it to be consolidated with the first suit. The High Court, however, dismissed the application to transfer the suit. On appeal, the Court of Appeal allowed the appeal and ordered the KL suit to be transferred to Johor Bahru High Court and to be consolidated with the other suits.

[21] The plaintiffs, as beneficiaries of the Trust in suit 228, sued the defendants for the following:

A (a) for breaches of the Trust;

(b) as against Kanawagi and Khana & Co for breach of constructive trust relating to the balance sum of RM16,554,111.92;

(c) as against the two Tok Batins, for knowingly receiving monies from the
B Trust.

Suit 228

[22] In suit 228 the plaintiffs claimed that Kanawagi and Tok Batin Adong, as trustees of the Trust, owed fiduciary duties to the plaintiffs as beneficiaries of the Trust, whilst Khana & Co as constructive trustees of the amounts
C received and held by them in respect of the Trust. It is the plaintiffs' pleaded case that the defendants committed various breaches of the Trust and/or assisted in those breaches of the Trust to the detriment of the plaintiffs.

[23] In the same suit, the plaintiffs contended that the defendants failed,
D refused and/or neglected to provide and render any information and accounting whatsoever in respect of the Trust and the Trust Fund.

[24] The plaintiffs appointed Folk Corporate Services Sdn. Bhd. ("Folk") to audit the unaudited financial statement. Folk prepared a report dated 17 January 2008 and made certain findings which formed the basis for the
E claims in suit 228:

(a) the trust deed has been breached for failing to include the DGJHEOA as trustee;

(b) there are less than four trustees which is not in accordance with the
F terms of the trust deed;

(c) between the years 2000-2006, the sum of RM5,511,457 was paid to the beneficiaries. However, a sum of less than RM2,778,300 was instead received by the beneficiaries and there was no accounting for this discrepancy;

G (d) no details of the legal fees, costs, consultant fees and expenses with regards to the payment of RM16,554,111.92 as legal fees;

(e) the sum of RM2,716,920 was not accounted for. This is the sum purportedly paid to three Tok Batins for the purposes of distribution to the beneficiaries but the plaintiffs as beneficiaries were not aware nor
H had they received this sum or any part thereof;

(f) no tax has been paid on the revenue.

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[25] The prayers sought for in suit 228, amongst others, are as follows:

(a) removal of the current trustees from the Trust and the reappointment of new trustees;

(b) the Trust Fund is to be managed by HSBC (Malaysia) Trustee Berhad ("HSBC Trustee");

(c) the agent and person appointed by the defendants in the Trust to cease handling of the trust matter and to hand over all documentation, monies and matters relating to management of the Trust. In case there are non-compliance, the Court Registrar to give effect to the order;

(d) an audited account in respect of the sum RM16,554.111.92 to be given by the defendants to HSBC Trustee;

(e) an audited account in respect of RM22,000,000 forming part of the actual compensation;

(f) the third defendant, Tok Batin Daud, to provide an account of all the monies paid to him by the Trust and the other defendant, Tok Batin Adong;

(g) special damages; and

(h) general damages and costs.

[26] Sometime in 2009, 78 beneficiaries *vide* civil suit no. 22-228-2009 applied *ex parte* for an injunction which was granted by the High Court on 17 April 2009. The defendants were restrained from disposing, dissipating and/or diminishing the assets of the Trust. On a second application the High Court on 5 May 2009 granted an *ad interim* order appointing a R&M to receive and manage all the assets of the Trust. The defendants were ordered to deliver all the assets of the Trust to the R&M, in particular, the 27 condominium units.

[27] The defendants applied to set aside the injunctions. However, the applications were dismissed by the High Court on 11 September 2009. The defendants' appeal to the Court of Appeal was dismissed which means both the injunctions still remain in force.

[28] On 6 August 2012 the PP seized the 27 condominium units pursuant to s. 51(1)(a) of the AMLA as they were purported to be the subject matter of an offence under s. 4(1) of the AMLA. The notice of seizure dated 6 August 2012 stated in clear terms that Kanawagi was prohibited from dealing with the property in any manner whatsoever.

A **Suit 106**

[29] In suit 106, the plaintiff ("the Trust") claimed that the first to seventh defendants had unlawfully conspired with each other to injure the plaintiff by:

B (i) utilising the Trust Fund to purchase the 27 condominium units of the Lanai Gurney Condominium in the name of the fourth defendant, Kanawagi, who confirmed that he bought the same for the plaintiff but in respect of which, to date, documents and information evidencing the title have not been given to the plaintiff;

C (ii) unlawfully and fraudulently procuring and entering into a management agreement (MA) with onerous and unfair terms to benefit themselves;

(iii) utilising the plaintiff's asset namely, the 27 condominium units, to earn secret profits and failing to render any accounts or information as to the same;

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(iv) utilising the Trust to increase the paid up capital of the first defendant, Virgin Properties Sdn. Bhd. ("Virgin"), by issuing shares with respect to such increase to the second and third defendants, namely Ku Azhar bin Ku Abdul Razak and Dinesh and making cash advances therefore to the second and third defendants;

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(v) unlawfully utilising the Trust's assets to make secret profits and failing to render accounts for the same and failing to render accounts for all other income and expenses earned from the 27 condominium units;

(vi) purchasing additional 30 condominium units with the assistance of the
F Trust Fund and/or its assets;

(vii) the first to seventh defendants have breached their fiduciaries duties to the Trust and also their contractual duties and statutory obligations;

(viii) the first to seventh defendants have failed and refused to render
G accounts with regards to the use of the sum RM7,000,000 the monies collected and expended under the MA and the assets of the plaintiff; and

(ix) the sixth and seventh defendants have breach their legal and professional duties owed to the plaintiff for failing to ensure the
H completion of the SPA of the 27 condominium units with the plaintiff as rightful owner and was negligence to release the RM7,000,000 sum.

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[30] The defendants named in the 106 suit are:

(i) Virgin Properties Sdn Bhd

(ii) Ku Azhar bin Ku Abdul Razak

(iii) Dinesh Kanavaji a/l Kanawagi

(iv) Kanawagi a/l Seperumaniam

(v) Tetuan Khana & Co

(vi) Riza Makhzan Arifin

(vii) Puteri Nurul Intan Arzian Abdul Aziz

(viii) Mampu Jaya Sdn Bhd

[31] Having set out the background of the case, we shall now consider the two preliminary issues raised by the defendants.

The First Preliminary Issue

Whether The Two Civil Suits (228 And 106) Filed In The High Court At Johor Bahru Can Only Be Brought By The Attorney General Or With His Consent Under s. 9 Of The Government Proceedings Act 1956 (GPA) And As Such The Decision By The High Court In Both Suits Are A Nullity And Ought To Be Set Aside

[32] Learned counsel for the defendants argued in submission that the appeals are in violation of s. 9 of the GPA which reads:

> 9(1) In the case of any alleged breach of any express or constructive trust for public, religious, social or charitable purposes, or where the direction of the court is deemed necessary for the administration of any such trust, the Attorney General or two or more persons having an interest in the trust and having obtained the consent in writing of the Attorney General, may institute a suit or be joined as a party in any existing suit on behalf of the Government or the public for the purpose of:
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> (a) asserting any interest or right in the trust property;
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> (b) removing any trustee;
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> (c) appointing a new trustee;
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> (d) vesting any property in a trustee;
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> (e) directing accounts and inquiries;
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> (f) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
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> (g) authorising the whole or any part of the trust property to be let, sold, mortgaged, charged or exchanged;

A (h) setting a scheme; and

(i) obtaining such further or other relief as the nature of the case may require.

(2) No suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with that subsection.

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[33] The subject matter of both the suits is the trust deed created pursuant to an order of the court for the benefit of the Orang Asli. It is the submission of learned counsels for the defendants that the Trust in question is a public or charitable trust as opposed to a private trust because it satisfies the three essentials laid down in *Income Tax Special Commissioners v. Pemsel* [1891] AC 531 where Lord Macnaghten described charitable trust as follows:

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> 'Charity' in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly.' There is also a requirement that the trust's purposes benefit the public (or some section of the public), and not simply a group of private individuals.

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[34] The four heads of charity as laid down in *Pemsel* are in respect:

(i) the relief of poverty;

(ii) the advancement of education

F (iii) the advancement of religion; or

(iv) other purposes beneficial to the community not falling under any of the preceding heads.

[35] It was strenuously argued by learned counsel for the defendants that the Trust is undoubtedly a charitable trust, and it is for the public benefit. The Trust provided for the advancement of education as well as other purposes beneficial to the Orang Asli community named in the trust deed. Therefore, s. 9 of the GPA is applicable.

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[36] Pursuant to aforesaid section, therefore the plaintiffs must obtain the written consent of the Attorney General in order to institute the suit or the Attorney General must be joined as a party in any existing suit on behalf of the Government or the public for the purpose of the Trust. Thus, there was an obvious total failure by the plaintiffs to comply with the expressed requirements of s. 9 of the GPA. Since there is no prior written consent of

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the Attorney General as required under the said provision, the court has no jurisdiction to consider the dispute. On this ground alone, this action is wholly misconceived and should fail.

[37] With respect, we do not agree with the submissions of learned counsels for the defendants. The Trust was created pursuant to a court order dated 5 June 2006 for the benefit of the 52 plaintiffs who are named in the First Schedule. By the compensation order, the sum of RM26,500,000 was awarded by the court to the 52 plaintiffs for the deprivation of use of their rights to derive income and earn their livelihood at the forest reserve and State land at the Linggui Valley, near Kota Tinggi, Johore.

[38] Lord Simonds in the case of *Oppenheim v. Tobacco Securities Trust Co Ltd*: HL 13 Dec 1950 said:

> The question is whether that class of persons can be regarded as such a 'section of the community' as to satisfy the test of public benefit. These words 'section of the community' have no special sanctity, but they conveniently indicate first, that the possible (I emphasise the word 'possible') beneficiaries must not be numerically negligible, and secondly, that the quality which distinguishes them from other members of the community, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual. It is for this reason that a trust for the education of members of a family or, as in *In re Compton* [1945] Ch 123, of a number of families cannot be regarded as charitable. A group of persons may be numerous but, if the nexus between them is their personal relationship to a single propositus or to several propositi, they are neither the community nor a section of the community for charitable purposes.

[39] His Lordship remarked that whilst the law of charity is pervaded with illogicalities:

> It must not, I think, be forgotten that charitable institutions enjoy rare and increasing privileges, and that the claim to come within that privileged class should be clearly established.

[40] The 52 plaintiffs are heads of families representing the Orang Asli living around the Sungai Linggiu catchment area and it is expressly provided under cl. 2 of the trust deed that the beneficiaries of the Trust are the 52 plaintiffs and "… their direct lineal descendants but no child-descendant shall be entitled to any share of the distribution of the assets or income during the lifetime of his or her parent." These words reflected the crystal clear intention of the purpose of the creation of the said Trust to create a trust for specific group of persons in the Orang Asli community and intended for private purpose. Where the beneficiaries are defined by reference to a personal nexus as in the case before us, the Trust, as a matter of law, cannot be charitable.

[41] We find that there is absolutely no element of public interest and /or that the Trust is for public purpose. The Trust does not fall under any of the categories of charities as described in the *Pemsel*'s case. It was not created for the purpose for relief of poverty. It is a Trust created to safeguard and manage the Trust Fund pursuant to the order of the High Court to ensure that the 52 plaintiffs, as the beneficiaries, will be given their rightful share of the compensation as ordered by the High Court.

[42] Based on the court order dated 5 June 2000, the trust deed and all other relevant documents relating to the Trust, we are of the considered view that the Trust is clearly not a public trust nor is it a charitable trust. There is no element of a public trust – that it is a trust for charitable or education purposes. The terms of the trust deed are articulately defined – the purpose, from the moment of its conception, is a private trust as ordered by the High Court. The Trust created specifically for the benefit of the 52 plaintiffs and limited to their direct lineal descendants. No child-descendant shall be entitled to any share of the distribution of the assets or income during the lifetime of his or her parent.

[43] That being the case, therefore, there is no requirement for the plaintiffs to obtain the consent in writing of the Attorney-General in order to institute this proceeding, or for the Attorney-General to be joined as a party to this proceeding. We, therefore, hold that the Trust is not a public trust, but is a private trust specifically created for the plaintiffs.

The Second Preliminary Issue

The Two Civil Suits 228 And 106 Were Proceeded In Contravention Of S. 54(3) Of The AMLA As The Plaintiff Failed To Get The Prior Written Consent Of The Public Prosecutor As Such The Decision Of The Two Suits Are A Nullity And Ought To Be Set Aside

[44] The second preliminary issue is in respect of the 27 condominium units located in Gurney Heights, Setapak, Kuala Lumpur. The 27 condominium units were purchased utilising the Trust Fund by Kanawagi and his son, Dinesh. Sometime in 2008, Kanawagi purchased the 27 condominium units purportedly on behalf of the Trust. Kanawagi is named as the purchaser in the SPA. Kanawagi then entered into MA with Virgin, a company owned and controlled by Kanawagi and his son, Dinesh.

[45] Learned counsel for the plaintiffs highlighted to this court in their submission that the injunctions as ordered by the High Court of Johor Bahru on 17 April 2009 and 5 May 2009 still remain in force. Kanawagi, Dinesh and Khana & Co by the injunctions were not only ordered to deliver possession, custody and control of the 27 condominium units but were

restrained from dealing with the said units. By the said High Court order their powers of managing the said 27 condominium units were transferred to the R&M and under the High Court's supervisory jurisdiction.

[46] On 6 August 2012 the PP seized the 27 condominium units pursuant to s. 51(1)(a) the AMLA as they were the subject matter of an offence under s. 4(1) of the same Act. Similar to the injunctions ordered by the High Court in 2009, the notice of seizure dated 6 August 2012, Kanawagi was prohibited from dealing with the property. Learned counsel for the plaintiffs argued that on the date of the seizure, the 27 condominium units effectively did not belong to Kanawagi either in law or in equity as the properties were under the purview and management of the R&M, and in law were not Kanawagi's personal assets. Thus, the notice of seizure covers only in respect of Kanawagi's assets but not the assets under the Trust.

[47] In response, it was submitted by learned counsels for the defendants that the two suits had effectively come to an end on 22 December 2016 despite that being the case, the trial judge proceeded to hear in contravention of s. 54(3) of the AMLA. No action, suit or other proceedings of a civil nature can be instituted in respect of the property which has been seized. The trial of the both suits was therefore a nullity.

[48] Where any immovable property is seized under s. 51(1) of the AMLA the seizure shall be effected by the following actions taken:

> (1) Where the Public Prosecutor is satisfied on information given to him by an investigating officer that any immovable property is the subject-matter of an offence under subsection 4(1) or evidence of the commission of such offence, such property may be seized, and the seizure shall be effected:
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> (a) by the issue of a Notice of Seizure by the Public Prosecutor setting out the particulars of the immovable property which is seized in so far as such particulars are within his knowledge, and prohibiting all dealings in such immovable property;
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> (b) by publishing a copy of such Notice in two newspapers circulating in Malaysia, one of which shall be in the national language and the other in the English language; and
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> (c) by serving a copy of such Notice on the Land Administrator or the Registrar of Titles, as the case may be, in Peninsular Malaysia, or on the Registrar of Titles or Collector of Land Revenue, as the case may be, in Sabah, or on the Director of Lands and Surveys or the Registrar responsible for land titles, as the case may be, in Sarawak, of the area in which the immovable property is situated.

[49] Section 51(3) of the AMLA further provides:

> Where an endorsement of a Notice of Seizure has been made under subsection (2), the Notice shall have the effect of prohibiting all dealings in respect of the immovable property, and after such endorsement has been made no dealing in respect of the immovable property shall be registered, regardless whether it was effected before or after the issue of such Notice or the making of such endorsement.

[50] Section 51(2) of the AMLA stipulates once the Registrar of Titles has been served with a notice of seizure, he must endorse the terms of the notice of seizure on the document of title in respect of the immovable property in the Register at his office:

> The Land Administrator, the Collector of Land Revenue, the Director of Lands and Surveys, the Registrar of Titles or the Registrar responsible for land titles, as the case may be, referred to in subsection (1) shall immediately upon being served with a Notice of Seizure under that subsection endorse the terms of the Notice of Seizure on the document of title in respect of the immovable property in the Register at his office.

[51] For so long as the seizure remains in force, any dealings remain null and void. This is provided under s. 54(1) of the AMLA:

> (1) Where any property has been seized under this Act, and so long as such seizure remains in force, any dealing effected by any person or between any persons in respect of such property, except any dealing effected under this Act by an officer of a public body in his capacity as such officer, or otherwise by or on behalf of the Federal Government, or the Government of a State, or a local authority or other statutory authority, shall be null and void, and shall not be registered or otherwise be given effect to by any person or authority.
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> (2) Subsection (1) shall be in addition to and not in derogation of subsections 51(3) and (4).
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> (3) For so long as a seizure of any property under this Act remains in force, no action, suit or other proceedings of a civil nature shall be instituted, or if it is pending immediately before such seizure, be maintained or continued in any court or before any other authority in respect of the property which has been so seized, and no attachment, execution or other similar process shall be commenced, or if any such process is pending immediately before such seizure, be maintained or continued, in respect of such property on account of any claim, judgement or decree, regardless whether such claim was made, or such judgement or decree was given, before or after such seizure was effected, except at the instance of the Federal Government or the Government of a State, or at the instance of a local authority or other statutory authority, or except with the prior consent in writing of the Public Prosecutor.

[52] We agree with the submissions of learned counsels for the defendants that the provisions under the AMLA are crystal clear – where an endorsement of a notice of seizure has been made, it shall have the effect of prohibiting all dealings in respect of the immovable property. After such endorsement has been made, no dealing in respect of the immovable property shall be registered, regardless whether it was effected before or after the issue of such Notice or the making of such endorsement.

[53] However, in the instant appeals before us, the properties in question, ie, the 27 condominium units do not belong to Kanawagi but belong to the Trust, and the said 27 condominium units are the subject matter of the injunctions ordered by the High Court which still remain in force. As such, the 27 condominium units do not fall within the ambit of the notice of seizure issued to Kanawagi.

[54] The AMLA is a legislation to provide for the offence of money laundering, the measures to be taken for the prevention of money laundering and terrorism financing offences. The Act empowers the relevant authority to forfeit property involved in or derived from money laundering and terrorism financing offences, as well as terrorist property, proceeds of an unlawful activity and instrumentalities of an offence and for matters incidental thereto and connected therewith.

[55] Section 17A of the Interpretation Acts 1948 and 167 (Consolidated and Revised 1989) ("the Interpretation Acts") provides:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[56] Since the 27 condominium units were purportedly purchased by Kanawagi as a trustee to the Trust, to invest on behalf of the beneficiaries, they cannot fall within the scope of the notice of seizure issued. The 27 condominium units are also the subject of the injunctions which have not been lifted, set aside or varied and therefore remain enforceable. As we have stated earlier, the purpose of the AMLA is to provide for measures to be taken for the prevention of money laundering and terrorism financing offences – to prevent an accused from dealing with assets or property procured through money laundering or unlawful activities. The appeals before us involve the enforcement of the Trust and the allegation of mismanagement of the Trust by the trustees.

[57] Thus, regarding the second preliminary issue, we are of the opinion that based on a reasonable and purposive interpretation of s. 54(3) of the AMLA, read together with s. 17A of the Interpretation Acts the provision of s. 54(3) of the AMLA cannot be interpreted the way that the defendants

A want it to be, that is, the plaintiffs are barred from continuing with the suit 228 and suit 106 in the light of the notice of seizure issued. In our view, we must interpret the relevant provisions of the AMLA to be in line with its purpose and objective as defined in the preamble to the said Act.

[58] Therefore, we are of the considered view that the High Court has
B jurisdiction to hear both suit 228 and suit 106.

Conclusion

[59] Having considered both the written as well as oral submissions of learned counsels on the two preliminary issues and having perused the appeal
C records, we find no merits in the two preliminary issues raised by the defendants.

[60] Accordingly, we dismissed the two preliminary issues. The parties are ordered to proceed with the hearing of the appeals.

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